

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRIAN H. ROBB, Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

FITBIT INC., JAMES PARK, WILLIAM R.
ZERELLA, ERIC N. FRIEDMAN, JONATHAN
D. CALLAGHAN, STEVEN MURRAY,
CHRISTOPHER PAISLEY, MORGAN
STANLEY & CO. LLC, DEUTSCHE BANK
SECURITIES INC., and MERRILL LYNCH,
PIERCE, FENNER & SMITH INC.,

Defendants.

No. 3:16-cv-00151-SI

CLASS ACTION

**[PROPOSED] ORDER REGARDING
PLAN OF ALLOCATION, AWARD
OF ATTORNEYS' FEES AND
EXPENSES, AND PLAINTIFF
COMPENSATORY AWARDS**

Hon. Susan Illston

On the 20th day of April, 2018, a hearing having been held before this Court to determine, among other things: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated January 18, 2018 (the "Stipulation") are fair, reasonable, and adequate for the settlement of all claims asserted by the Settlement Class against Fitbit Inc. ("Fitbit"), James Park, William R. Zerella, Eric N. Friedman, Jonathan D. Callaghan, Steven Murray, and Christopher Paisley (the "Individual Defendants," and together with Fitbit, the "Fitbit Defendants"), Morgan Stanley & Co. LLC, Deutsche Bank Securities Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Underwriter Defendants" and together with the Fitbit Defendants, "Defendants")¹; (2) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among the Settlement Class Members; and (3) whether to approve Plaintiffs' application to the Court for an award of attorneys' fees, reimbursement of expenses, and compensatory awards for the Plaintiffs; and

The Court having considered all matters submitted to it at the hearing and otherwise; and

¹ Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants are collectively referred to as the "Parties".

It appearing that the Notice and Proof of Claim substantially in the form approved by the Court in the Preliminary Approval Order (Dkt. No. 207) (“Preliminary Approval Order”) was mailed to all reasonably identifiable potential Settlement Class Members; and

It appearing that the Publication Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with the Court’s specifications;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Unless indicated otherwise, all capitalized terms used herein have the same meanings as set forth and defined in the Stipulation.

2. The Court has jurisdiction over the subject matter of this action (the “Action”), and over all Parties to this Action including Plaintiffs, the Defendants, and all Settlement Class Members, including all Settlement Class Members who did not timely file a request for exclusion from the Settlement Class by the relevant deadline pursuant to the Preliminary Approval Order.

3. This Order addresses matters not otherwise addressed in the Court’s Order and Final Judgment contemporaneously entered in the Action.

4. Co-Lead Counsel are awarded attorneys’ fees in the amount of \$_____ and expenses in the amount of \$_____, such amounts to be paid from out of the Settlement Fund within ten calendar days following entry of this Order. In the event that the Court’s Judgment does not become Final, and any portion of the Fee and Expense Award has already been paid from the Settlement Fund, Lead Counsel shall within ten business days from the event which precludes the Effective Date from occurring or the termination of the Stipulation, refund to the Settlement Fund the Fee and Expense Award paid to Lead Counsel.

5. Plaintiffs are awarded the following sums, as reasonable costs and expenses directly relating to the representation of the Settlement Class as provided in 15 U.S.C. § 78u-4(a)(4), such amounts to be paid from the Settlement Fund upon the Effective Date of the Settlement:

Jesse M. Koth: \$_____

Kelley Koth: \$_____

Mark Cunningham: \$_____

Timothy Flynn: \$_____

Viet Tran: \$_____

1 6. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable
2 method to allocate the Net Settlement Fund among Settlement Class members.

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4 **SO ORDERED** in the Northern District of California on _____, 2018.

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8 THE HON. SUSAN ILLSTON
9 UNITED STATES DISTRICT JUDGE
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